



**STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE  
REAL ESTATE APPRAISER COMMISSION  
500 JAMES ROBERTSON PARKWAY  
NASHVILLE, TENNESSEE 37243-1166  
615-741-1831**

**February 9, 2009  
Second Floor Conference Room, Andrew Johnson Tower**

The Tennessee Real Estate Appraiser Commission met February 9, 2009, at 9:0 a.m. in Nashville, Tennessee, at the Andrew Johnson Tower in the second floor conference room. Chairman, James E. Wade, Jr., called the meeting to order and the following business was transacted.

**COMMISSION MEMBERS PRESENT**

James E. Wade, Jr.  
Herbert Phillips  
Marc Headden  
Thomas R. Carter  
Najanna Coleman Kenneth Woodford  
Dr. Edward A. Barylka  
William R. Flowers, Jr.

**COMMISSION MEMBERS ABSENT**

Jason West

**STAFF MEMBERS PRESENT**

Nikole Avers, Administrative Director  
Jesse D. Joseph, Staff Attorney

**RULE MAKING HEARING**

The Commission held a Rule Making Hearing to amend the language of Rule 1255-1-.12 paragraph (8) to require specifically for trainee's to notify the Commission of all addresses and supervisors within thirty (30) days of any change. Additionally, Subparagraph (10) (c) of Rule 1255-1-.12 was amended to define "Direct Supervision" of a registered trainee. Mr. Jesse D. Joseph, legal counsel, read a summary of the proposed changes aloud during the Hearing. The proposed Rule changes were noticed to the public prior to the Rule Making Hearing. No public comment (written or oral) was received by the Real Estate Appraiser Commission administrative office prior to the Rule Making Hearing. No public comment was given during the Real Estate Appraiser Commission meeting, though there was one non-appraiser member of the public present during the Rule Making Hearing. The Rule Making Hearing was concluded at 9:15 a.m. CST.

## **ADOPT AGENDA / CONFLICT OF INTEREST FORMS / ROBERTS RULES OF ORDER**

The Annual Conflict of Interest Forms were signed by the Commission members. A motion was made to adopt Roberts Rules of Order. Mr. Phillips made the motion; it was seconded by Ms. Coleman. The motion carried unopposed. Then, the Commission voted to adopt the agenda. Mr. Flowers made the motion to accept the agenda and it was seconded by Mr. Phillips. The motion carried unopposed.

## **MINUTES**

The January 2009 minutes were reviewed. Mr. Headden made the motion to accept the minutes as written. It was seconded by Mr. Phillips. The motion carried unopposed.

## **GENERAL BUSINESS**

### **Applicant Conference**

**Jack J. Johns** made application to become a certified general real estate appraiser as an out of state applicant. Mr. Johns was required to attend an applicant conference because on the application he checked "yes" to character question three (3) pertaining to convictions which occurred from 1997 to 2006. The convictions were for two (2) OUIL, two (2) possession of marijuana charges, leaving the scene of an accident without contacting the authorities, and a DWI conviction. The penalties included jail time and fines. He told the Commission he had undergone treatment after struggling with alcohol and drug use for years. He stated he has been free from substance abuse since May of 2006 and continues to attend regular AA meetings. Dr. Baryla made a motion to accept his application subject to the applicant submitted three (3) appraisal reports for review by a Commission member for compliance with USPAP. He added to the motion that personal attendance at an experience interview would not be required at this time. Mr. Carter seconded that motion. The motion carried unopposed.

### **Julianne Clarke – experience issue pertaining to AQB compliance**

In 2007, Julianne Clarke applied to become a State Certified Residential Real Estate Appraiser; however, it was discovered during her experience interview that all of the appraisal reports she had submitted for experience consideration failed to comply with Standard Rule 2-3 in that there was no disclosure that she had contributed "significant appraisal assistance" in the certification of the appraisal reports and there was no description of the scope of work she may have performed in those assignments. To ensure compliance with ASC policy statements and the AQB minimum criteria, the Commission members relied heavily upon opinions obtained from John Brenan, of the AQB, and Marc Wienberg, formerly of the ASC, in making the final decision on the matter back in August of 2007 to issue Ms. Clarke a non-AQB complaint State Licensed Real Estate Appraiser credential because her reports were found to not be USPAP compliant. Ms. Clarke passed the State Licensed examination and was granted the credential in January of 2008. I have attached, for your use, a copy of the relevant sections of the minutes from those meetings pertaining to the experience interview findings.

Subsequent to Ms. Clarke's experience interview, a complaint was opened against her former supervisor, William Chandler, and as a result in November of 2007 Mr. Chandler signed a Consent Order agreeing that he violated USPAP, Standard Rule 2-3 in that he failed to identify significant appraisal assistance rendered by Ms. Clarke. I have attached, for your use, a copy of the consent order which was signed by the former supervisor of Julianne Clarke as a result of the experience interview findings.

Ms. Clarke has contacted her local representatives and has requested this matter has been brought to the Commission again to reconsider her ability to become a Certified Residential Real Estate Appraiser.

Administrative Staff and Legal Counsel contacted the ASC to seek additional guidance on this issue.

The ASC stated in their response letter that, there is no single right answer as to how the Commission should resolve the matter. They agreed that only the full Commission has the authority to act on any new application for certification which Ms. Clarke may choose to submit. However, they offered the following to assist in deliberations:

1. At issue is Ms. Clark's perceived failure to meet the 2500 hours of USPAP compliant experience requirement set forth in the AQB criteria. In August 2007, the Commission correctly deemed the work reflected on the experience log as non-USPAP compliant, because the reports failed to acknowledge Ms. Clarke's participation in their preparation. USPAP requires any appraiser who provides significant assistance to sign the certification or be identified in the certification. In addition, in accordance with USPAP, the extent of the assistance was required to have been set forth in the report.
2. The appraisal reports which Ms. Clarke submitted as trainee prior to August of 2007, which did not identify her as contributing substantial appraisal assistance, are not transformed into USPAP-complaint reports merely because Mr. Chandler was sanctioned by the Commission for violating SR2-3 and failing to identify Ms. Clarke within said reports
3. They agreed that the reports, therefore, are \*not\* USPAP compliant. Any attempts to "correct" these reports after the fact are not necessary. Further, any corrections could create additional misleading reports in that they are not being corrected and communicated to the original clients of the reports, nor would they be consistent with the original intended use.
4. The consent order entered into by Ms. Clarke's former supervisor, William Chandler, in which he specifically admits to his failure to include her name and degree of involvement in the reports in question appears to provide mitigating and extenuating circumstances which may legitimately influence the Commission's opinion of the experience Ms. Clark claimed on her experience log.
5. The ASC staff in its field review of the program would not take exception to the Commission's acceptance of the experience log, providing Ms. Clarke's file is thoroughly documented as to the reason for the decision.
6. Because Mr. Chandler's confession does not describe the degree and type of assistance Ms. Clarke provided, the Commission may also wish to further assess her ability to prepare USPAP compliant work.
7. The Commission could address this deficiency by requesting that Ms. Clarke demonstrate her current proficiency in USPAP by requiring that she submit more recent appraisal reports and/or demonstration reports.
8. As part of her application process she must successfully complete the certified residential examination.
9. No exam would be required to change her AQB compliant status on the National Registry from "no" to "yes" should the Commission decide that she should remain at the stated licensed level.
10. The ASC is neutral as to whether the Commission should grant or deny the requested credential, and would defer to the Commission's judgment.

Both the ASC and the Tennessee Department of Commerce and Insurance recognize that only the full Commission has authority to act on any new application for certification which Ms. Clarke may choose to submit.

**Recommendation:**

Administrative Staff and Legal Counsel recommend the Commission require Ms. Clarke in any new application for upgrade (licensed to certified residential) to:

1. Submit a new application for Certified Residential Real Estate Appraiser.
2. Demonstrate current proficiency in USPAP by requiring that she submit more recent appraisal reports and/or demonstration reports.
3. Provide evidence of having passed the appropriate certified residential examination.

A motion was made by Commissioner Flowers to allow Ms. Clarke to apply to upgrade for certified residential real estate appraiser, demonstrate her experience proficiency in USPAP by submitting either three (3) demonstration appraisal reports or three (3) reports she has completed in the time since she became license. He added to the recommendation that she would not be required to personally attend an experience interview at this time. Mr. Woodford seconded that motion. The motion carried unopposed.

**Experience Interviews**

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**Alisha M. Gammon** made application to upgrade from a registered trainee to become a certified general real estate appraiser. Mr. Flowers was the reviewer and stated that her reports were very good and he would recommend approval of her experience. Mr. Phillips made the motion to accept the recommendation and Mr. Headden seconded the motion. The motion carried unopposed.

**James W. Coffman** made application as an out of state applicant to become certified general appraiser in Tennessee. Mr. Flowers and Mr. Headden were the reviewers and they recommended approval of his experience. Mr. Phillips made the motion to accept the recommendation and Mr. Carter seconded the motion. The motion carried unopposed.

**Daniel J. Burch** made application to upgrade from a registered trainee to become a certified general appraiser. Mr. Headden was the reviewer and stated that the reports were in order and compliant and he would recommend approval of his experience. Mr. Flowers made the motion to accept the recommendation and Mr. Woodford seconded the motion. The motion carried unopposed.

**Brandon Nelson** made application to upgrade from a registered trainee to become a certified residential appraiser. Mr. Carter was the reviewer and stated that the reports were acceptable and he would recommend approval of his experience. Mr. Flowers made the motion to accept the recommendation and Mr. Phillips seconded the motion. The motion carried unopposed.

**Gina C. Inlow** made application to upgrade from a registered trainee to become a certified residential appraiser. Mr. Woodford was the reviewer and stated that the reports were competent and he would recommend approval of her experience. Mr. Headden made the motion to accept the recommendation and Mr. Flowers seconded the motion. The motion carried unopposed.

**Education Committee Report**

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Dr. Baryla reviewed the education and submitted his recommendation to Ms. Avers via e-mail and was present at the Commission meeting for discussion of the education report. Two courses were held over for discussion from the January Commission meeting, course 1268 "Litigation Kills for the Appraiser: An Overview" and course 1273 "Introduction to Expert Witness Testimony". After must discussion of the course content of these two courses, it was recommended by Mr. Flowers that course 1268 be approved

for seven (7) hours of continuing education and the course 1273 only be approved for two (2) because the content of the course was principally marketing and how to seek clients for that particular type of work. He recommended all other be approved as requested in the Education Report, including the individual course approval of Terry L. Evans. Mr. Phillips seconded the motion. The motion carried unopposed.

### EDUCATION COMMITTEE REPORT

Course Provider	Course Number	Course Name	Instructors	Hrs.	Type	Recommendation from Dr. Baryl
APPRAISAL INSTITUTE	1268	Litigation Skills for the Appraiser: An Overview	Arlen Mills	7	CE	Discussion requested from January meeting
APPRAISAL INSTITUTE	1209 (Recons.)	Appraising Historic Preservation Easements	Richard Roddewig	20/18 Currently; Requesting 23/21	CE	Recommend approval of change
APPRAISAL INSTITUTE	1280	Spotlight: The New Residential Market Conditions Form	David Braun; Danny Wiley	3	CE	Recommend approval
MCKISSOCK INC.	1273	Introduction to Expert Witness Testimony	Kenneth Guilfoyle	7	CE	Discussion requested from January meeting
DENNIS BADGER & ASSOCIATES	843 (Update)	National USPAP Update Course (7 Hour) * <b>Retroactive approval requested to 1/15/09</b>	Dennis Badger & Thomas Veit	7	CE	Recommend approval retroactive to 1/15/09
DENNIS BADGER & ASSOCIATES	1275	FHA Today * <b>Retroactive approval requested to 1/28/09</b>	Dennis Badger & Thomas Veit	7	CE	Recommend approval retroactive to 1/28/09
DENNIS BADGER & ASSOCIATES	1276	Report Writing Essentials * <b>Retroactive approval requested to 1/28/09</b>	Dennis Badger & Thomas Veit	7	CE	Recommend approval retroactive to 1/28/09
OSBORNE SEMINARS	1277	Real Estate Investment, Development, Lease & Joint Venture Analysis	Neil Osborne	6	CE	Recommend approval

#### Individual Course Approval

Name	License #	Course Provider	Course Name	Hrs	Type	Recommendation from Dr. Baryl
Terry L. Evans	CG 74	Lorman Education Services	Law of Easements: Legal Issues & Practical Considerations	6	CE	Recommend approval

### LEGAL REPORT

**Based on prior Commission approval, the Chairman is signing an order in the following matter:**

**Marti R. Watts** (approved 11/08) - signed Consent Order imposing a \$3,000 civil penalty and requiring her to complete a 15 hour site valuation and cost approach course within 120 days of order. In this order, Respondent agreed that she did not explain the results of her analysis of the contract, did not report seller concessions, that she inaccurately reported the design of the subject as a ranch with an attached double garage when it was actually a 2 story with a built-in garage. Respondent admitted many additional violations such as not properly applying the cost approach or the subject's listing price, that the photo of one comparable included in her report was not a true photo of this comparable according to a CRS drawing, and that she altered the copy of the report sent in to the TREAC administrative office which reflected the subject as a split foyer and the foundation being on a slab. Respondent agreed that her actions violated USPAP's Ethics Rule, Conduct Section, and SRs 1-1(a), (b) & (c), 1-2(e)(i) & (iv), 1-3(a),

1-4(a) & (b)(i) & (iii), 1-5(a), and 2-2(b)(iii) & (viii), T.C.A. §§ 62-39-326(4) & (5) and 62-39-329, and Tenn. Comp. R. & Regs. 1255-5-.01(2).

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**1. L08-APP-RBS-2008011891 Commissioner Flowers was the Reviewer**

A consent order for voluntary surrender was approved by the Commission in December, 2008 relating to Respondent's failure to properly research the prior sales history of the subject property and the comparable sales in a 2007 appraisal. Respondent also failed to update his residential, mailing and business addresses with the Commission's administrative office and for a 3-4 month period in the fall of 2008, Respondent could not be located by phone, mail, or e-mail regarding this complaint. We could not reach Respondent for several months last year regarding Commissioner Flowers' desire for an informal conference. Respondent was located by an investigator in mid-January of this year, has stated he lost his mother last year and was distraught, and claims he moved several times in 2008 living with different relatives. Respondent has stated he has not been working as an appraiser for several months. He has now apologized to the Commission for failing to properly advise the Commission of his proper mailing addresses and other contact information and has committed himself to complying with the requirements in the future. Respondent has requested that the Commission reduce the voluntary surrender to a 2 year suspension within a revised consent order, and he has signed such an order.

**Prior Complaint / Disciplinary History:** 200209965 (Dismissed); Consent order imposing \$500 civil penalty and 2 courses in Nos. 200706986 and 200708255

**Recommendation and reasoning:** Counsel for the Commission and the Administrative Director recommend that the revised consent order imposing a 2 year suspension of his certified residential certificate be approved since Respondent now appears to have committed himself to future compliance and to be proceeding in good faith.

**Vote:** Mr. Headden made the motion to accept the recommendation and Mr. Phillips seconded the motion. The motion carried unopposed.

**2. L08-APP-RBS-2008012351 Commissioner Woodford was the Reviewer**

A prior consent order was approved by the Commission in October, 2008 relating to Respondent's failure to develop credible assignment results in the sales comparison approach in his appraisal of a motel built in the early 1970's., his failure to report the seller's agreement to pay \$100,000 in the buyer's closing costs, and his failure to set out within the report the subject's past history in the categories of either revenue or expenses which would demonstrate the relationship between historical and projected items and how such projections were supportable and reasonable. Respondent also failed to analyze within this report the effect on value of furniture, fixtures, and equipment (FFE), where these non- real property items were specifically included within the appraisal.

Respondent is desirous of settling this matter, and in an informal conference in January of 2009, indicated through his counsel that he did not desire to admit to any findings of fact or conclusions of law which could be used against him in pending Circuit Court litigation filed against him. Respondent and his counsel have signed a revised consent order neither admitting nor denying the findings of fact or conclusions of law contained in the order, but has specifically agreed that the Commission has authority to so find and conclude, and that it may enter the order containing such findings and conclusions. In essence, Respondent has requested that the Commission permit him to take a no contest posture in this matter. The revised consent order contains all of the findings and conclusions as contained in the original of the

order, and one final requested revision was that the Commission permit him to complete all of the required education ( Forecasting Revenue [7 hours]; Analyzing Operating Expenses [7 hours]; Small Hotel/Motel Valuation [7 hours]; and Report Writing and Valuation Analysis [40 hours]) in 1 year, as opposed to 120 days, due to his child care responsibilities and possible out-of-state travel to complete at least one of these courses.

**Prior Complaint / Disciplinary History:** None

**Recommendation and reasoning:** The Administrative Director, Commissioner Woodford and counsel for the Commission are all of the opinion that the requests for revision are reasonable and recommend the Commission to approve the revised consent order.

**Vote:** Mr. Flowers made the motion to accept the recommendation and Mr. Phillips seconded the motion. The motion carried unopposed.

**3. L08-APP-RBS-2008018711 An outside certified general appraiser was the Reviewer  
Commissioner Woodford requested to be recused from vote on this matter.**

Complainant, an opposing party in a divorce action, complained amongst other things, that the wife's appraiser (Respondent) used improper comparables, and never included items of improvement. Complainant's allegations are found to be completely devoid of merit, and the subject appraisal was found to be exceedingly well-documented, well-written and well-supported by market data. However, it appears that a URAR form was used for this appraisal, and that it was provided with the understanding that it was for a divorce proceeding.

**Prior Complaint / Disciplinary History:** None

**Recommendation and reasoning:** Given the intended use of the appraisal and the intended use of the report, it is the reviewer's recommendation that a letter of instruction be issued given that according to Fannie Mae, the URAR form is to be utilized for mortgage lending purposes only. At a minimum, the reviewer is of the opinion that if a URAR report were to be used in a divorce situation, written documentation in the way of a cover letter should be provided explaining that this type of report was used with the clear understanding that this was not a mortgage lending transaction. A letter of instruction in a minor matter of this nature does not constitute discipline, and nothing within the review found any error whatsoever with the underlying report.

**Vote:** Mr. Flowers made the motion to accept the recommendation and Mr. Phillips seconded the motion. The motion carried unopposed.

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Being no further business, the meeting was adjourned at 4:25 p.m.

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Chairman, James E. Wade, Jr.

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Nikole Avers, Administrative Director